ancy Where Tenant for Years Holds Over Rebuttable.—The presumption that a tenant for years who holds over after the expiration of his term, with the landlord's permission, is a tenant from year to year, may always be repelled by evidence that the holding over was of another character.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 332.]

5. Landlord and Tenant (§ 115 (3)*)—Evidence Held to Establish Tenancy from Month to Month.—Evidence, that defendants who had been holding under a two-year lease, continued in possession under a supplementary agreement held to establish a tenancy from month to month.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 122.]

6. New Trial (§ 71*)—Verdict on Conflicting Evidence Should Not Be Set Aside unless Plainly against Evidence.—The verdict of a jury, particularly upon conflicting evidence, is entitled to great respect, and should not be set aside unless plainly against the evidence, or without evidence to support it.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 455.]

7. Landlord and Tenant (§ 116 (7)*)—Notice of Termination Held Not Waived by Collecting Rent.—Collection of rent to the time at which the lease was terminated held not a waiver of the effect of a notice to terminate the lease, given 30 days prior to the end of the month.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 183.]

Error to Circuit Court, Russell County.

Action by B. F. Thompson, executor, and others, against N. D. Artrip and another, doing business as the Lewis Creek Mercantile Company. A judgment of dismissal was entered after setting aside a verdict for plaintiffs and granting a new trial, and plaintiffs bring error. Reversed and rendered.

A. T. Griffith, of Honaker, for plaintiffs in error.

Bird & Lively, of Lebanon, and *G. B. Johnson,* of Honaker, for defendants in error.

CLINCHFIELD COAL CORPORATION *v.* HAYTER.

Sept. 22, 1921.

[108 S. E. 854.]

1. Trespass (§ 46 (1)*)—Verdict for Plaintiff for Injury to Trees Sustained by Evidence.—In an action by a landowner for cutting and branding trees, injuring them, a verdict for plaintiff held supported by evidence.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 322.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

2. Appeal and Error (§ 361 (3)*)—That Petition in Error Complained of a Certain, Instead of a Final, Judgment Immaterial.—That a petition in error complained of a "certain" judgment, instead of a final judgment, did not constitute ground for dismissal, where the only judgment entered was a final one.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 586.]

3. Appeal and Error (§ 1170 (3)*)—Failure to Furnish Bill of Particulars When Ordered Not Ground for Reversal.—In an action for damages to plaintiff's trees, that plaintiff failed to furnish a bill of particulars at the time called for by the order was not ground for reversal, when defendant was not taken by surprise, and in view of Code 1919, § 6331.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 582.]

4. Evidence (§ 358*)—Correct Maps Admissible Regardless of Source.—Where maps and drawings introduced by plaintiff in an action for injury to trees were in fact correct representations of the locus in quo, they were admissible regardless of the source from which plaintiff derived the information upon which they were based.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 300.]

5. Evidence (§ 379*)—How Correctness of Maps May Be Shown.—It is not necessary that the correctness of a map or drawing should be shown by the person who made it; the fact may be shown by any competent witness who knows it.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 301.]

6. Trespass (§ 46 (2)*)—Showing of Title Held Sufficient.—In an action for injuries to plaintiff's trees, plaintiff's showing of common title in the immediate grantors of plaintiff and defendant, respectively, and that plaintiff's deed, duly recorded, was prior in time to defendant's, held a sufficient showing of true title in plaintiff to entitle him to recover.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 232.]

7. Damages (§ 62 (1)*)—When Duty to Minimize Damages Arises Stated.—The duty to minimize consequential damages from a wrongful act of defendant is not arbitrarily imposed in all cases, but only where it is a reasonable duty, and can be performed at trifling expense or with reasonable exertion, and there is no such duty where the injured party is not chargeable with notice that consequential damages are likely to ensue.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 212.]

8. Damages (§ 62 (3)*)—Owner of Injured Trees Held Not Bound to Hasten Their Sale to Minimize Damages.—Where plaintiff's trees had been injured by defendant's wrongful acts in branding them, plaintiff was not bound to hasten their sale to minimize damages where he

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

did not know that consequential damages would arise; defendant having assured him that the branding would do no harm.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 212.]

9. Trespass (§ 2*)—Branding Trees by Mistake Trespass Warranting Damages.—Where defendant admitted branding plaintiff's trees by mistake, such evidence alone entitled plaintiff to judgment for some amount, as it was a trespass on plaintiff's land.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 219.]

10. Appeal and Error (§ 1004 (2)*)—Recovery for Injury to Trees Held Not Excessive.—Where there was conflict in the evidence, a recovery of $400 for cutting 18 trees and branding 135 so that some of them died could not be held excessive by the Supreme Court of Appeals.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 606.]

Error to Circuit Court, Russell County.

Action by one Hayter against the Clinchfield Coal Corporation. Judgment for plaintiff, and defendant brings error. Affirmed.

Morison, Morison & Robertson, of Bristol, *Burns & Kidd,* of Lebanon, and *J. W. Flanagan,* for plaintiff.

S. H. Sutherland, of Clintwood, for defendant.

GILMER *v.* REDWINE.

Sept. 22, 1921.

[108 S. E. 857.]

1. Convicts (§ 3*)—Statute for Appointment of Committee of Convict's Estate Construed.—Under Code 1919, § 4998, in order to appoint a committee for the estate of a convict, the person must have been convicted of a felony and sentenced to the penitentiary, or to the state convict road force for one year or more, and must possess some estate, real or personal, some portion of which must be within the territory of the court making the commitment, and the motion must be made by an interested party, and on the existence of any of these grounds being challenged, evidence of the existence of the grounds must be furnished.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 357.]

2. Convicts (§ 3*)—Where No Evidence Was Presented on Issues Concerning the Right to Appoint a Committee for a Convict's Estate, the Appointment Was Illegal.—Where the appointment of a committee for the estate of a convict was resisted on the grounds that he had no estate, and that the person moving for the appointment had no interest in committing his estate, the bill of exceptions, reciting that no

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.